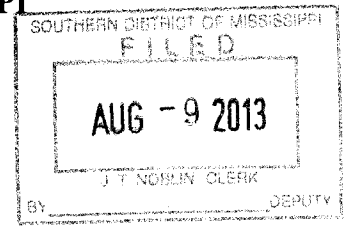


**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**



BETTY SCOTT, INDIVIDUALLY,
AS ADMINISTRATRIX FOR THE ESTATE
OF ROBERTA SCOTT, AND ON BEHALF OF
THE WRONGFUL DEATH BENEFICIARIES
OF ROBERTA SCOTT

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:13cv120 DCB
MTP

COVENANT HEALTH & REHAB OF VICKSBURG, LLC
D/B/A COVENANT HEALTH & REHAB OF VICKSBURG;
COVENANT DOVE, LLC; LINDA WASHINGTON, RN;
CORPORATIONS A-G; JANE DOES B-G;
AND JOHN DOES A-G

DEFENDANTS

NOTICE OF REMOVAL

COME NOW Defendants, Covenant Health & Rehab of Vicksburg, LLC d/b/a Covenant Health & Rehab of Vicksburg, Covenant Dove, LLC and Linda Washington, R.N. ("Defendants") by and through counsel, and file this, their Notice of Removal of this cause to the United States District Court for the Southern District of Mississippi, Western Division, and would show unto the Court the following:

I. JURISDICTION AND VENUE

1. Plaintiff, Betty Scott, individually, as Administratrix for the Estate of Roberta Scott and on behalf of the wrongful death beneficiaries of Roberta Scott ("Plaintiff") filed a civil action against Defendants alleging medical malpractice.

2. Covenant Health & Rehab of Vicksburg, LLC d/b/a Covenant Health & Rehab of Vicksburg and Covenant Dove, LLC are foreign limited liability corporations organized under the laws of the State of Delaware and whose sole members, through relevant layers, are

corporations organized in Delaware with principal places of business located in the State of Tennessee. Linda Washington, R.N. is a resident of the State of Mississippi, however plaintiff neither has, nor can she state a claim against Ms. Washington and her improper joinder in this lawsuit cannot be used to defeat diversity of citizenship jurisdiction.

3. Plaintiff filed her original Complaint in the Circuit Court of Warren County, Mississippi, styled "Betty Scott, Individually, as Administratrix for the Estate of Roberta Scott, and on behalf of the wrongful death beneficiaries of Roberta Scott versus Covenant Health & Rehab of Vicksburg, LLC D/B/A Covenant Health & Rehab of Vicksburg; Covenant Dove, LLC; Corporations A-G; Jane Does A-G; and John Does A-G," Civil Action No. 13,0031-CI. Linda Washington, R.N. was not a named party in the original Complaint. No process was ever served on Covenant Health & Rehab of Vicksburg, LLC d/b/a Covenant Health & Rehab of Vicksburg and Covenant Dove, LLC therein.

4. On or about July 17, 2013, Plaintiff filed an Amended Complaint bearing the same Civil Action No. 13,0031-CI with a revised caption: "Betty Scott, Individually, as Administratrix for the Estate of Roberta Scott, and on behalf of the wrongful death beneficiaries of Roberta Scott vs. Covenant Health & Rehab of Vicksburg, LLC D/B/A Covenant Health & Rehab of Vicksburg; Covenant Dove, LLC; Linda Washington, RN; Corporations A-G; Jane Does B-G; and John Does A-G".

5. Plaintiff served the Amended Complaint upon Covenant Health & Rehab of Vicksburg, LLC and Covenant Dove, LLC on or about July 17, 2013 and upon Linda Washington, RN on or about July 29, 2013; therefore, pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446(b), this Notice of Removal is timely filed within the thirty (30) days of receipts of service of process.

6. The United States District Court for the Southern District of Mississippi, Western Division, is the district and division embracing the place where the aforementioned action was filed.

II. DIVERSITY OF CITIZENSHIP AND AMOUNT IN CONTROVERSY

A. PARTIES

7. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332 in that complete diversity exists between the properly named parties herein and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

8. Plaintiff is a resident citizen of the State of Mississippi. *Plaintiff's Amended Complaint*, ¶ 1, Ex. "A".

9. Defendant, Covenant Health & Rehab of Vicksburg, LLC D/B/A Covenant Health & Rehab of Vicksburg, is a foreign limited liability company organized under the laws of the State of Delaware, whose sole member, through various layers, is a corporation organized in Delaware whose principal place of business is located in the State of Tennessee.

10. Defendant, Covenant Dove, LLC, is a foreign limited liability company organized under the laws of the State of Delaware, whose sole member, through various layers, is a corporation organized in Delaware whose principal place of business is located in the State of Tennessee.

11. Defendant, Linda Washington, RN, is a resident of the State of Mississippi; however, Plaintiff has no claim and has no possibility of recovery against her since any claim is time-barred by the two (2) year statute of limitation contained in § 15-1-36, Code of Mississippi. Linda Washington, RN has thus been improperly joined in this proceeding and her citizenship

should not be considered in the Court's diversity of citizenship analysis. See Hare v. City Fin. Co., 269 F. Supp. 2d 766, 770 (S.D. Miss. 2003)

12. The remaining Defendants, "Corporations A-G", "John Does A-G" and "Jane Does B-G" are unidentified and have no legal presence for the purposes of diversity of citizenship jurisdiction. The Defendants are not legally or properly named and must be disregarded for purposes of determining diversity of citizenship jurisdiction pursuant to 28 U.S.C. § 1441.

B. AMOUNT IN CONTROVERSY

13. While denying that Plaintiff is entitled to any sum or relief of, from or against Defendants, the amount in controversy in this civil action exceeds \$75,000.00, exclusive of interest and costs, as evidenced by Plaintiff's Amended Complaint for wrongful death seeking an award of compensatory and punitive damages.

14. Pursuant to 28 U.S.C. § 1332, this Court has original jurisdiction since it is a civil matter, the amount in controversy is in excess of \$75,000.00 and the properly joined parties are of diverse citizenship.

III. CONCLUSION

15. Defendants hereby give written notice of the filing of this Notice of Removal to Plaintiff, and a true and correct copy of this Notice is being filed with the Clerk of the Circuit Court of Warren County, Mississippi, as required by 28 U.S.C. § 1446(d).

16. In further support of this Notice, Defendants attach copies of all process and pleadings in this action as follows:

Exhibit "A": Circuit Clerk's Affidavit and Court File

Exhibit "B": Plaintiff's First Amended Complaint

Exhibit "C": Plaintiff's Original Complaint

WHEREFORE, Covenant Health & Rehab of Vicksburg, LLC d/b/a Covenant Health & Rehab of Vicksburg, Covenant Dove, LLC and Linda Washington, R.N., respectfully remove this action from the Circuit Court of Warren County, Mississippi, pursuant to 28 U.S.C. § 1441.

THIS the ____ day of August, 2013.

Respectfully submitted,

COVENANT HEALTH & REHAB OF VICKSBURG,
LLC D/B/A COVENANT HEALTH & REHAB OF
VICKSBURG, COVENANT DOVE, LLC AND LINDA
WASHINGTON, R.N. DEFENDANTS

BY: 

EUGENE R. NAYLOR (MSB #3757)
JASON P. VARNADO (MSB #103839)

OF COUNSEL:

WISE CARTER CHILD & CARAWAY, P.A.
401 East Capitol Street, Suite 600
Post Office Box 651
Jackson, Mississippi 39205-0651
Tel: 601-968-5500
Fax: 601-944-7738
Email: ern@wisecarter.com
jpv@wisecarter.com

ATTORNEYS FOR DEFENDANTS COVENANT HEALTH & REHAB OF VICKSBURG,
LLC D/B/A COVENANT HEALTH & REHAB OF VICKSBURG, COVENANT DOVE, LLC
AND LINDA WASHINGTON, R.N.

CERTIFICATE OF SERVICE

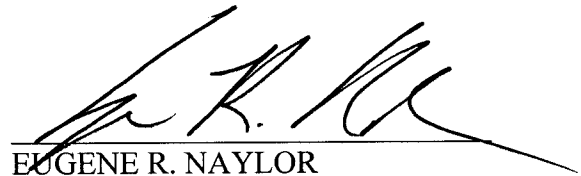
I, Eugene R. Naylor, one of the attorneys of record for Defendants, do hereby certify that I have this day caused to be mailed via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Notice of Removal to the following:

William 'Wes' Fulgham, Esq.
Morgan & Morgan
One Jackson Place, Suite 777
Jackson, Mississippi 39201

ATTORNEY FOR PLAINTIFF

Shelly Ashley-Palmertree
Warren County Circuit Clerk
Post Office Box
Vicksburg, Mississippi 39181

THIS the 9th day of August, 2013.


EUGENE R. NAYLOR